

# The compleat judge: Justice Peter Young

*Interview by Rene Sofroniou*

I was nervous about this interview. My image of Justice Young has always been of a lightning-sharp, impossibly-learned-in-the-law judge who brooks no nonsense (alas) and really keeps you on your mettle. I wasn't sure whether my mettle were up to our meeting. It amazes me that he expressed some uncertainty as to why *Bar News* would want to interview him. In fact it is no light thing to get to probe the mind of the Chief Judge of the Equity Division and in my view a proper oral history project should be conducted, if it has not already. More to the point, I was really tickled (and touched) by some of the judge's responses to my questions. I came away from the interview thinking that, for all of his impressive erudition and acuity, I had met a top-rate human being. I was sorry to say goodbye.

**Rena Sofroniou:** Thank you for agreeing to the interview. You are a man of many parts: judge, Chief Judge of the Equity Division (which also means administrator now, I gather), writer, teacher, Christian, family man. I note that in addition to this you have been Patron of the Motor Neurone Disease Association?

**Justice Young:** I am now Vice Patron, because the Governor is the Patron.

**Rena Sofroniou:** I've even heard a scandalous rumour that you are a Sydney commuter, too?

**Justice Young:** Yes and I am also Patron of the Bus and Truck Museum.

**Rena Sofroniou:** I suppose the commuter role could well be the most time-consuming of all of them, given the current state of transport in Sydney. It's a busy life, I gather?

**Justice Young:** Yes.

**Rena Sofroniou:** And you are renowned for the relish with which you leap in to the judicial seat on the Bench to dispose of cases efficiently and quickly and with which you rush to take on additional cases when your own workload is exhausted. The obvious question has got to be – how do you relax, Judge?

**Justice Young:** I suppose one answer is I

don't. But the other answer is I travel now every three or four years and I am very interested in transport history.

**Rena Sofroniou:** Where does that take you?

**Justice Young:** The transport history is purely local and involves observations of what is happening at the present time and trying to remember what happened twenty, thirty, forty years ago. But when I go overseas every three or four years I spend a bit of time in London and sometimes a bit of time in Berlin and other places working out how their systems click.

**Rena Sofroniou:** I suppose it would have been fascinating to see post-Wall transport changes in Berlin?

**Justice Young:** Yes, their bus system is now much easier – and there is no Check Point Charlie.

**Rena Sofroniou:** What is your attitude to the use of life's time? Are you driven to obtain full value out of each day or is the busyness just the result of the jobs and interests?

**Justice Young:** These days it just happens.

**Rena Sofroniou:** Well if the child is father to the man, may I ask you about your background? Am I correct in thinking that you represent the fourth generation of the Young family in the law?

**Justice Young:** Yes that's right.

**Rena Sofroniou:** So we're going back how far?

**Justice Young:** 1873, when Richard Alexander Young became a solicitor and later mayor of Maitland. He married a Miss Wolstenholme who was also a mayor of Maitland and that's how I get the Wolstenholme in my name. Their son, James Young, was admitted to the Bar in 1903. My father was admitted as a solicitor in 1933. I was admitted in 1963 too as a barrister and my son Marcus was admitted to the Bar in 1993.

**Rena Sofroniou:** There's something



spookily inevitable about the year 2023.

**Justice Young:** No, we can stop now because I haven't got any grandchildren yet and I think I would have needed one by now to get admitted then.

**Rena Sofroniou:** You have twenty-one years to see if one can be admitted as a lawyer by then. That's an admirable family heritage.

**Justice Young:** Yes.

**Rena Sofroniou:** In light of it, do you feel that you had any real choice as to your career?

**Justice Young:** I never really thought of doing anything else but whether that was because of family background or was in the blood, I don't know.

**Rena Sofroniou:** Were you encouraged in the decision to become a lawyer?

**Justice Young:** I suppose so. I can't remember any direct encouragement but certainly I expressed the desire to go to the Bar fairly early on and I went in for debating at school to prepare.

**Rena Sofroniou:** So you thought that it was a job that was particularly suited to your preferences in any event?

**Justice Young:** Yes, and I was particularly awkward with my hands, so it was either the law or teaching.

**Rena Sofroniou:** How closely does Brian Butterworth, the protagonist of your book *Civil litigation* resemble you as barrister?

**Justice Young:** Oh in many ways but not completely.

**Rena Sofroniou:** What are the points of departure?

**Justice Young:** I think Brian's basic philosophy is mine and the way he would go about cases as told to his pupil in that book are pure me but a lot of the padding is not. I used to teach legal history to

SAB/BAB students and found that the only way you really got the message across was by a bit of sin, sex and sadism and so Butterworth is sort of loaded with a bit of that.

**Rena Sofroniou:** Oh, is that right? I mustn't have read it closely enough, I came away with lots of legal research points.

**Justice Young:** Then you have missed key points.

**Rena Sofroniou:** I must have been too naive in reading it. One thing that I recall was a throw-away phrase at the end he takes silk and he's taken out for a drink which he accepts with alacrity, since, as you put it, he normally led 'an austere life'. Is that an inevitable quality of life at the Bar?

**Justice Young:** Well, it probably was for me but there were quite a number of busy juniors in my day who went out of their way to court solicitors and invite them to

Christmas parties and things of that nature.

**Rena Sofroniou:** And generally party?

**Justice Young:** That wasn't my way.

**Rena Sofroniou:** Would you agree with the often-stated view that says prior to the 1980s there was more formality and also more eccentricity at the Bar than afterward?

**Justice Young:** Certainly more eccentricity but I think because the law has become more a business now, there's less room for that.

**Rena Sofroniou:** Who were either the leading lights or famous eccentrics in your circle prior to your appointment to the Bench?

**Justice Young:** I don't really call it my circle but people like Kerrigan QC: it's a shame that someone didn't recall all his anecdotes because if you

were in court either as his junior or opponent you'd be regaled with all those.

**Rena Sofroniou:** His name crops up so often in peoples' reminiscences. Is that because he was a particularly good raconteur?

**Justice Young:** Well he always had something interesting to say. He would tell

you stories of the past – I can remember being in the Banco Court on one occasion – the old St James Road courts now – and he would tell how one of the Windeyers used to annoy Sir Philip Street by always coming into the court via the judge's door. We don't have people who do that these days. I'm told someone did give Kerrigan a dictaphone once and he gave it back.

**Rena Sofroniou:** What a shame – maybe he needed company around him to do the storytelling. My next area of curiosity – your exotic practice at the Bar. Why were you admitted in Papua New Guinea and as a silk in Fiji?

**Justice Young:** Well, I was admitted in Papua New Guinea because John Kearney said to me 'Peter there's a nice Family Provision Act application up in Papua New Guinea and I'm being admitted to deal with it for the estate. The plaintiff also wants a good Sydney equity junior, it would be fun.'

And so I said I'd be willing to take the brief for the plaintiff and did. It was involving a gentleman who was domiciled in Papua New Guinea but had property all over Australia and it was decided that the best thing to do was to have all the Family Provision Act claims heard in the one place, and because he was domiciled in Papua New Guinea, that's where we went.

It was a bit of a mistake in some respects because we got up there and John Kearney, who was a great fellow and who always wanted to do the right thing, asked me: 'How are we going to get admitted up there? We better go over and get Laurence Street to give us a certificate saying that we're good guys.' So we went over to Laurence Street and he wrote a nice rosy certificate to say that we were good guys and we took that up with us. Tom Reynolds, Guy Reynolds father, was also getting admitted and he was out at Lae I think also the same day that we were in Moresby. Anyhow, we found out when we got there that all we required was a certificate from the PNG under-secretary for justice to say that we were needed. It didn't matter whether we were good guys or not. So we went over and my solicitor took me into a room and we waited for about a quarter of an hour and at about quarter to nine a Melanesian gentleman appeared and my solicitor said to him: 'Sign here Boss'. So this gentleman signed the piece of paper that my solicitor put in front of him and that, I subsequently found, was the under-secretary for justice certifying



that we were needed.

We were duly admitted by a single judge. Tom Reynolds, on the other hand, was admitted by three judges and he was crowing about this for a while until we found out that they only used three judges when there was some doubt about the fellow. So John Kearney and I were quite happy to have been admitted by one judge.

And that's how I got admitted in Papua New Guinea. After I got admitted there I did a few more cases, mainly in administrative law. The principal one was against Frank McAlary when I was acting for the secretary of air who had dismissed the chief executive officer of Air New Guinea, immediately after that gentleman had flown on annual holidays, in a special *Government Gazette*. Unfortunately without good communications this gentleman got to Singapore to find that he'd been dismissed, so he flew back.

I can remember we were arguing natural justice and all those points and in New Guinea they have three stages of Acts – constitutional law, special laws and ordinary laws. The constitutional law trumps the special law and a special law trumps an ordinary law. You know when a law is a special law when the outside of the Act of Parliament has 'This is a special law' printed on it. Anyhow we got to a stage in the argument when my copy of the law had 'This is a special law' and McAlary's hadn't. The judge just said: 'Oh it happens to us all the time.' But that was also the first time that I met a problem that may now be a little more common, when, on my arrival to argue a case before a five-judge appeal court, my solicitor said: 'The presiding judge is sleeping with junior counsel for the other side, do you think we

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**Rena Sofroniou:** Your response?

**Justice Young:** Well one out of five I didn’t think would make much difference.

**Rena Sofroniou:** You thought your side could accommodate that.

**Justice Young:** Especially having been to school with another of them.

**Rena Sofroniou:** You will excuse me if I decline to make the obvious rejoinder in respect of that remark, Judge.

**Justice Young:** That was New Guinea. In Fiji, I think it was Steve Stanton who asked me to lead him in a case. There the Rules used to be that you were admitted *ad hoc* for your first four cases, after which if you’d been a good boy four times you could get permanent admission. So I got *ad hoc* admission to do a couple of cases over there.

**Rena Sofroniou:** You were appointed to the Bench in March 1985 at a young age for the job – I think in your early forties?

**Justice Young:** Yes, 44.

**Rena Sofroniou:** What were your expectations of that office at the time you were appointed?

**Justice Young:** I’m not too sure what you mean by that question.

**Rena Sofroniou:** Did you see it, for example, as a new way of practising law? Did you have a strong sense of thereby obtaining the opportunity of providing service to the community?

**Justice Young:** Well, I’d probably just select the high ground and nominate the latter. I had been vice-president of the Bar Association, which had involved me being in a lot of committees with judges.

I believe I got too close to them and I was getting to the stage where it was very awkward in the Supreme Court not to treat these guys as ‘buddies’, and that’s not healthy.

**Rena Sofroniou:** I suppose it helps to shake off some reticence that might otherwise be there.

**Justice Young:** I began to feel a bit uncomfortable. I always did want to go to the Bench. I was probably appearing more frequently in the Court of Appeal, Full Federal Court and in the High Court at this stage. The view taken by the attorney general of New South Wales at the time

was that if they appointed a person in their mid-forties, they would get more work out of them before their pension at seventy. It hasn’t worked out that way because guys burn out but that’s what the theory was, so a few of us were appointed in our forties.

**Rena Sofroniou:** Turning to your judicial work, I think I can identify an underlying educational component in the methodology of some of your judgments, so that apart from the merits of the case you are deciding there’s an element of more generalised instruction or explanation in them. I could be totally deluded of course – is that your conscious objective in writing your judgments?

**Justice Young:** Some judgments, yes. I mean whenever you are writing a judgment you should (though you don’t always do this) work out why you’re writing it.

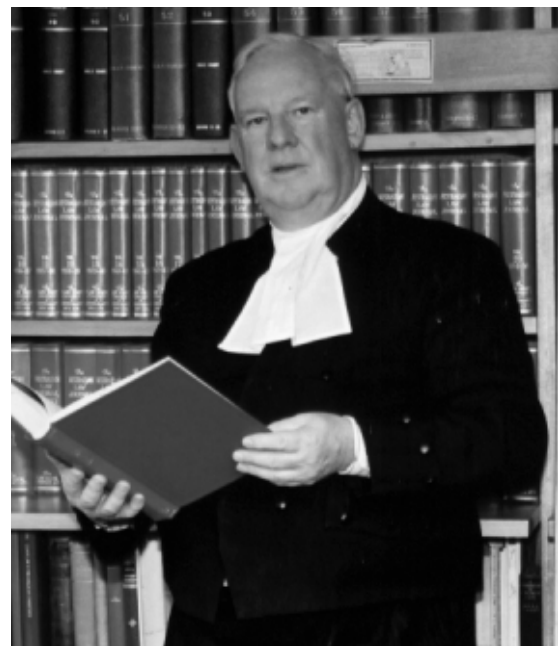
**Rena Sofroniou:** Well then at the risk of putting a provocative question – there seems to be a tendency – and I single out no court or judgment when I say this – whereby thanks to current technology each pleading, affidavit and submission is faithfully recorded in some dozens of pages of ‘background’ leading up to very few paragraphs of decision with undisclosed reasoning, at the end. It is difficult to plough through. Can you identify such a phenomenon?

**Justice Young:** Yes, with some people. I don’t know whether it’s common but, to save repeating myself, you can read what we said at that session on how to write judgments out at Sydney University.

(i) I said there that you’ve got to remember that the Court of Appeal will be tempted to say, at the instigation of new counsel for the loser, ‘the judge didn’t think of this, that and the other point’. So you’ve got to watch your back a bit in writing judgments. You have got to remember why you are writing a judgment. In many cases it’s just resolving the dispute on hand but our judgments are read quite extensively in Singapore, Malaysia, New Zealand and even England. So if you do find an appropriate vehicle, and it’s been well argued, it’s usually a good idea to record what has happened.

**Rena Sofroniou:** With one eye on the wider reading audience?

**Justice Young:** Yes, and I always say to the academics: ‘I’ve given this *dicta*, now



you build on it.’ They rarely do these days unfortunately.

**Rena Sofroniou:** Why is that?

**Justice Young:** I don’t know. I think it may be because academics are now becoming more part-time and they’re putting out a quantity of work to keep their positions at the university rather than producing quality articles. Certainly as editor of the *Australian Law Journal* I notice that.

**Rena Sofroniou:** You are Chief Judge in Equity at an interesting time where what might be identified as pure equity doctrine (to the extent it is not tautologous to use such a phrase) is becoming hybridised with more general commercial law principles, which latter may not have a pure equity pedigree.

**Justice Young:** Well I think you’ve got to go back in history a bit. Up until 1972 we have the common law pleading system and the English Rules of Hilary Term 1834 which meant that the only development in commercial law in New South Wales could take place in equity. Charles McLelland (or Jerry, as he was always known), really developed commercial law in the equity side. Laurence Street carried that on, so that New South Wales commercial law has always had a very great equity flavour as opposed to English commercial law, which has developed completely independently. Occasionally we get great clashes, such as the way in which the English think of time clauses as opposed to the way we think of time clauses. That’s probably why commercial law is more suited in New South Wales to be heard in the Equity Division rather than Common Law

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**Rena Sofroniou:** What do you say about the role of equity in public law now?

**Justice Young:** I don't think it's as much as it used to be, because they've now reformed the procedures so we don't have to budge. In the old days, when you had *mandamus*, which was relatively limited, and *certiorari*, which was relatively limited, in order to do justice in public law you had to make declarations of right and go through all sorts of funny procedural gambits. Now when you've got in the federal sphere the *Administrative Decisions (Judicial Review) Act 1977* and when in the State sphere each judge can give a declaration, injunction, *certiorari* or whatever he or she wants to do, you don't have to worry so much about whether it's an equitable remedy or not.

**Rena Sofroniou:** Provided, in your first example, that you fall within the terms of the federal statute?

**Justice Young:** Well, you can usually find something that can invoke our jurisdiction. To illustrate, one of our problems is: a little girl has just left home, her father goes to the Police station, the Police say: 'Oh the magistrate has committed your child to a welfare institution'. The father asks: 'Why.'

'I can't tell you' the Police say and he can't get

any information anywhere.

So he comes up here to us. Now because the little girl is the child of a marriage, we've got very limited powers under sec 8 of the *Family Law Act 1975*. But we've still got *certiorari* powers, so if people come up to the Equity Court because it is the 'odd job' court, we can find some remedy or at least exercise power sufficient to find out what happened. There are not many cases of that nature but of about the dozen I have dealt with over the last six or seven years I think that in about half of them once the order for *certiorari* was made the crown solicitor said: 'Oh, that shouldn't have happened' and seems to rectify the situation.

**Rena Sofroniou:** So the Equity Division can stabilise the situation?

**Justice Young:** Yes.

**Rena Sofroniou:** Now what about the relatively current developments in equity in the High Court. Do you consider the judgments are affording us adequate

direction and guidance to enable barristers and solicitors to accurately advise their clients as to their particular position? I'm thinking, to take one example, of the current law concerning the exercise of remedial discretion when equity finds a right to relief?

**Justice Young:** No! Next question?

**Rena Sofroniou:** More, please.

**Justice Young:** Well, we used to go through cycles but they're becoming shorter and shorter. You go through a period where the principle is up for grabs and there are a lot of uncertain judicial decisions for about thirty years, and then for seventy years everyone follows before the next cycle starts. We're in a period at the moment where everything's up for grabs and historically that will always be followed by a period where the principles are slowly brought out of a new mess and those principles are then applied for the next X years until we go through another sphere of change.

**Rena Sofroniou:** And in the interim what's a judge to do? Actually, what's a barrister to do?

**Justice Young:** Well he or she should still have to hand the basic principles and you just apply them by analogy, always remembering that you're governed by exactly what the majority of the High Court says – if you can identify what that is.

**Rena Sofroniou:** Lawyers in this State and probably further afield rely upon you to teach us property law, conveyancing, mortgages, recent developments in the ALJ and difficult legal points upon which you have written the only *dicta*. Has legal writing always been a major component of your legal career?

**Justice Young:** No.

**Rena Sofroniou:** So how did it come about?

**Justice Young:** Butterworths had a book writing competition going and I entered it. I got halfway through a book on company law, but I wasn't happy with it. I still use that half-written book every so often to write a judgment because I found the results of my research useful but that's as far as it went. I can't remember exactly why I wrote *Declaratory orders*.

**Rena Sofroniou:** Yes, I forgot that. We also need you to teach us about declarations.

**Justice Young:** It was 1975. What had happened in about 1965 was that Laurence Street was very keen to ensure that his cases were reported properly, and in his

inimitable style he persuaded Butterworths that all of his cases should be reported by me in the *New South Wales Reports*. I started an association with Butterworths then and there were so many Street declaratory orders that I gradually collated them, together with those that came from the English book, *The declaratory judgment*, by Zamir, and some other sources to make this book. Butterworths were so pleased that someone had actually finished a book they gave me a couple of other projects.

**Rena Sofroniou:** I knew the Brian Butterworth name was sus!

**Justice Young:** Yes – they didn't like it at first. They thought someone was parodying their great name. They also had great problems with it because none of their sub-editors had any experience with the narrative style. Writing a book has become a lot easier with current computer technology. In those days if you deleted seven words in the proofreading process you had to be sure to find another seven to insert back in.

**Rena Sofroniou:** Speaking of computer technology, I recall Brian Butterworth manfully dragging his pupil to look up the *American law reports* and the like. Fifteen years since the publication of *Civil litigation* we live in a brave new world of computerized legal research, ie millions of references with no abstracts to give context. How do you handle that?

**Justice Young:** One gets so much now, you must ignore a great amount of it! I'm a fairly old-fashioned researcher and of course we have a legal researcher for the Division who is well-skilled in computer research. Their input together with traditional research methods fairly much covers the field.

**Rena Sofroniou:** Could you share your method with us?

**Justice Young:** A typical case before me would typically require some sort of statutory construction. My traditional research method therefore requires me to consult legal word books: *Stroud's judicial dictionary* Butterworths *Words and phrases*, *Australian legal words and phrases*, the words and phrases sections the *Australian digest* and *Australian current law* and of course the 90 volume *American Words and phrases, permanent edition* – I then have my own noting up system whereby I have every case noted up, even those cases which relate to areas of law I do not commonly encounter. A red notation means that the case has been overruled in

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if you can identify  
what that is.



a subsequent decision; blue means it has been thoroughly discussed; green means it has been followed and black means it has merely been referred to.

When the list of authorities comes in at 8:30 that morning (as it ought to) my tipstaff is instructed to take particular note of any red notations to the authorities being cited. I think I am now notorious for asking counsel, 'so what is your best case' and, on being informed, telling them: 'Really? I note that decision has been distinguished'.

**Rena Sofroniou:** Thanks, Judge. From which reports does the noting up come?

**Justice Young:** Australian, English and New Zealand reports. It costs me about \$40,000 per year from my own funds to maintain the subscriptions.

**Rena Sofroniou:** I think that is appalling.

**Justice Young:** Yes. Fortunately my ALJ honorarium helps.

**Rena Sofroniou:** So you avoid some of the ghastly legal site search engines?

**Justice Young:** In this job there is too much to do in too little time. I frequently need to decide cases on the Bench and there is insufficient time to do all the research I would like to. You mostly know that counsel has thoroughly researched the area. Sometimes you know they haven't.

**Rena Sofroniou:** Again in *Civil litigation*, you reproduced a list of common advocacy errors originally promulgated by Justice Kirby, with which you could relate as, then, a new judge. Most of these really reduced to a failure to state the central facts and legal issues of the case in an adequately direct and timely manner. Are judges adequately assisted by advocates?

**Justice Young:** A lot of people stress their own good points and totally ignore their opponent's. They get carried away with their own thoughts.

**Rena Sofroniou:** An over-identification with their client or the case?

**Justice Young:** Perhaps. They choose to

run it their own way and prefer to skip over the differences between their case and their opponent's. Of course their opponent is frequently doing the same. A good advocate rides with the blows, and it is difficult to do this when you have to lodge written submissions beforehand.

Some of the great advocates, in their early days, would meander and meander around until the judge made some comment. They

would then seize upon the point made by the judge and build on it, giving the impression that it was the judge who had seized upon this brilliant idea, which counsel then humbly adopted.

**Rena Sofroniou:** Were the judges so amenable to manipulation?

**Justice Young:** Yes, but it's much harder today with written submissions.

**Rena Sofroniou:** Isn't there a risk that the production of very detailed written submissions simply results in dueling parallel essays which do not address each other's points?

**Justice Young:** Yes. Chief Justice Mason in the *Sydney Law Review* said that a great advantage of written submissions is to give a picture of the argument and show where it is heading.<sup>2</sup> This is especially useful when the matter is before a quick, anticipating judge. There were some judges in earlier days, who made it necessary for counsel to drive preconceived ideas out of the judge's head, before it was free to put any new submission in. As George Bernard Shaw wrote in his introduction to *The little black girl in search of God*, 'If you want to put clean water into a bowl first of all empty the dirty water out'. Advocates dealing with such a judge would either have to build on what the judge had said or get the old idea out. Before one such judge I remember I had my junior and solicitor running to find the books during the running of the trial to be able to prove to the judge the ideas he was floating during the case were wrong and get those ideas out of his head quickly before they could grow.

Some judges we called 'logs'. They



would sit and reveal absolutely nothing as to what they were thinking. This is not fair and in any event you are often wrong and it is surely better to find that out before you have delivered judgment than after! I believe a judge should always give counsel an indication of their view, without of course having prejudged the matter.

**Rena Sofroniou:** How do I find the more obscure but apt references that from time to time appear as icing on the judicial cake? I have a vision of a secret society of Pakistani, South African and Tanzanian judges all swapping unreported judgments with you.

**Justice Young:** Not quite. When I appeared in Papua New Guinea, citing decisions of the High Court earned you two points, but citing *East African Law Reports* earned you three. So I got into the habit of consulting them. Indeed, I would discover that some Privy Council cases, in fact binding upon Australian courts, had not been reported anywhere else but the *East African Law Reports*.

**Rena Sofroniou:** What about regional Reports – Indian, Hong Kong, Pakistani cases?

**Justice Young:** India has very good law on joint tenancies and tenancies in common because it is a factor in the Hindu way of life and they have the same partition law that we have. Whenever you have a sec 66G application you must go for the Indian authorities: *Mitra's Co-ownership and partnership*, 7th edition, Eastern Law House (Calcutta, 1994) is an excellent resource.

**Rena Sofroniou:** Sales will go through the roof, you watch. Turning now to your

I remember I had my junior and solicitor running to find the books during the running of the trial to be able to prove to the judge the ideas he was floating during the case were wrong and get those ideas out of his head quickly before they could grow.

Church role, you are Chancellor to the Anglican Diocese of Bathurst – is that correctly put?

**Justice Young:** That's right.

**Rena Sofroniou:** What does a chancellor do?

**Justice Young:** The local Anglican Church once thought it had the same powers as the Established Church of England. It was disabused of that in about 1868. In England, the chancellor is the bishop's confidential legal advisor, who also presides over the Consistory courts. We do not have consistory courts here, but the chancellor generally gives legal advice, sits next to the bishop at Church Synod. In the country, apart from a few local solicitors sometimes, the chancellor is the only lawyer experienced in ecclesiastical law and in drafting in that area and preparing legislation.

**Rena Sofroniou:** And you are also head of the Lawyers' Christian Fellowship?

**Justice Young:** I am the President – it is mainly an honorary role so that there is a judge as President. The work is really done by Graham Ellis but I have been on the Executive since Norman Jenkyn was president in the early 1970's.

**Rena Sofroniou:** Is it a rewarding affiliation?

**Justice Young:** Yes. I think it is remarkable that the percentage of Christians in the profession is greater than in the community as a whole. There are fourteen judges in the judges' bible study group and I believe there is a waiting list.

**Rena Sofroniou:** While we are speaking of less mundane matters, what do you consider to be your best virtue, Judge?

**Justice Young:** I don't know whether I have one. I suppose the Bar think I'm a

bit mad, a bit of a loose cannon, so people approach a trial before me as if it's going to be an unpredictable event. I don't know whether that helps settlement or not.

**Rena Sofroniou:** Aw, Judge – that seems a bit harsh. Anyway, is this an image you foster?

**Justice Young:** No.

**Rena Sofroniou:** Well then is it one you relate to?

**Justice Young:** No, I don't think I'm mad, really.

**Rena Sofroniou:** That's quite a poignant response! Well, sadly, you have seemed a little too sane to me, if I may say so. The only 'mad' thing I've ever observed is you informing me in one matter before you that my cross-examination had really gone on long enough and that that was quite sufficient for your purposes.

**Justice Young:** Well the standard of cross-examination in equity is quite sad.

**Rena Sofroniou:** Umm... thanks for your candour, Judge(!)

**Justice Young:** The fault is not necessarily with counsel. In fact it seems as though few barristers are briefed with sufficient material on which to cross-examine. The number of times counsel is triumphantly grilling a witness because their affidavit said 'were' and the oral evidence said 'are'. Really!

**Rena Sofroniou:** Exploring that a bit, do you consider objections to affidavits on the ground of 'improper form' to be well taken?

**Justice Young:** Yes, within limits. The classic example is 'She swore at me'. Sometimes it makes a difference as to what was said. Where the words set out give only a vague indication of the words said, I will uphold the objection 95 per cent of the time. But it seems to me that you have not been before me lately, Rena.

**Rena Sofroniou:** I keep getting someone else.

**Justice Young:** My current practice is that if the case is listed for, say, 1 May, there has to be an exchange of objections by 18 April. A week before hearing I rule on the objections. Then the case starts, the affidavits are read, I provide the rulings and basically go so fast that counsel can't follow them. No-one asks me to repeat them. Then I get on with hearing the case.

**Rena Sofroniou:** Ingenious! They'll never know! But vagueness aside, it is when the exact words of the conversation are given, but in a tense that denotes indirect speech that bugs me. Especially when the witness can put it that way in response to a question in cross-examination and the erstwhile objector is as meek as a lamb.

**Justice Young:** Well in ruling I am fairly liberal with respect to form objections. If, when I have read all of the affidavits I see that the other side has given a version of the same conversation I tend to point that out to

objecting counsel.

**Rena Sofroniou:** What in your view is your worst habit?

**Justice Young:** Probably getting overtired and making comments better left unsaid. One should remember that counsel often know when they've got a crook case, and it is hard on them to make that appear too early.

**Rena Sofroniou:** What is your view of the relatively small number of women at the Bar?

**Justice Young:** Very disappointing! When I was vice president of the Bar Association I used to say, in response to media questions for example: 'Give it fifteen years and see how the numbers leap up' and it hasn't happened. That is a great shame for the Bar.

**Rena Sofroniou:** My next spookily revealing stock standard Rorschach blot of a question – what non-essential object you would like to have with you if stranded upon a desert island?

**Justice Young:** It brings to mind that joke I read in a magazine once: a man is stranded on a desert island with a twelve volume encyclopedia lying around him and he says: 'Perhaps I should have saved that blonde instead'. The point being, of course, that however useful they might be, if you choose objects over people, you will soon be fairly bored.

**Rena Sofroniou:** Any imminent plans? Are you interested in teaching overseas for example?

**Justice Young:** I went to Queen's University, in Kingston, Ontario for a month while I was researching *Fisher & Lightwood*. It was a quiet place to do some research and a little lecturing. But the staff were never in their rooms – they had to act as advocates to supplement their work and they would complain at how badly they were treated by the full-time advocates. I enjoyed it but I have had the experience now and don't really want to keep doing it.

**Rena Sofroniou:** Content with things as they are?

**Justice Young:** Yes – my annual August overseas holiday when I was at the Bar has now become an 11- week trip every three or four years and that is sufficient for me.

**Rena Sofroniou:** Thanks for a very enjoyable afternoon.

I suppose the Bar think I'm a bit mad, a bit of a loose cannon, so people approach a trial before me as if it's going to be an unpredictable event. I don't know whether that helps settlement or not.

1 *Australian Bar Review* 9(2) August 1992, pp.130-145

2 (1984) 10 *Syd Law Rev* 253, 258